

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 3, 2004

IN RE:

**BELLSOUTH'S MOTION FOR THE
ESTABLISHMENT OF A NEW PERFORMANCE
ASSURANCE PLAN**

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**DOCKET NO.
04-00150**

ORDER ESTABLISHING PROCEDURAL SCHEDULE

This matter is before the Hearing Officer upon the *Motion to Establish Procedural Schedule* filed by BellSouth Telecommunications, Inc. ("BellSouth") on September 23, 2004. At a status conference held on November 1, 2004 to discuss the setting of a schedule, BellSouth distributed a proposed procedural schedule. On November 5, 2004, the Competitive Carriers of the South, Inc. ("CompSouth")¹ filed comments on the schedule proposed by BellSouth. In response, BellSouth filed a letter on November 12, 2004 urging the Hearing Officer to set a schedule. After due consideration of the positions of the parties, and for the reasons set forth below, the Hearing Officer grants the *Motion to Establish Procedural Schedule* and establishes a procedural schedule.

¹ As listed in the *Petition to Intervene*, the members of CompSouth include. Access Integrated Networks, Inc , MCI, Birch Telecom, Business Telecom, Inc , Covad Communications Company, AT&T, NewSouth Communications Corp , Talk America, Nuvox Communications, Inc., ITC^DeltaCom, Xspedius Communications, Momentum Business Solutions, Network Telephone Corp , KMC Telecom, Z-Tel Communications, Inc , and IDS Telecom LLC

BACKGROUND

BellSouth filed the *Motion by BellSouth Telecommunications, Inc for the Establishment of a New Performance Assurance Plan* ("BellSouth's Motion") on May 13, 2004. On May 20, 2004, CompSouth filed a response requesting, among other things, dismissal of *BellSouth's Motion*. At a regularly scheduled Authority Conference held on June 7, 2004, the panel assigned to this docket voted unanimously to hold this docket in abeyance pending the outcome of a proposed workshop in TRA Docket No. 97-00309. That workshop was held on September 14, 2004, and on September 23, 2004, BellSouth filed a motion requesting that a procedural schedule be set in this docket. At the October 11, 2004 Authority Conference, the panel voted to reactivate this docket, to deny CompSouth's request for dismissal of *BellSouth's Motion* and to appoint a Hearing Officer to prepare the matter for a Hearing before the panel.² On November 1, 2004, the Hearing Officer held a status conference at which counsel for CompSouth indicated that CompSouth did not plan to participate further in this docket, although its individual members might decide to participate. At the status conference, BellSouth distributed a proposed procedural schedule which was essentially the same as the one it filed with its *Motion to Establish Procedural Schedule* on September 23, 2004, but with different dates indicated on the schedule. Counsel for CompSouth requested the opportunity to have input into the procedural schedule, and the Hearing Officer directed that any comments on the proposal be filed by November 5, 2004.³

² See *Order Reactivating Docket, Denying Motion to Close Docket and Appointing a Hearing Officer* (November 24, 2004)

³ See Transcript of Proceedings, pp 6-8 (November 1, 2004)

On November 5, 2004, CompSouth⁴ filed comments on the procedural schedule distributed by BellSouth. In its comments, CompSouth argued that the TRA should adopt a “similar approach which builds on, rather than repeats, the Florida experience.”⁵ CompSouth suggested a series of workshops to define and narrow the issues similar to the process that the Florida Public Service Commission has undertaken in its review of BellSouth’s proposed Performance Assessment Plan.⁶ After these proposed workshops, CompSouth further suggested that the parties be directed to file an issues matrix setting forth their respective positions, followed by the filing of testimony.⁷ CompSouth also suggested that the TRA set aside five to seven days for the hearing and stated that after the submission of the joint issues matrix, the Authority might wish to consider assigning this matter to the Hearing Officer on the merits.⁸

On November 12, 2004, BellSouth filed a letter again urging the Hearing Officer to set a procedural schedule. In its letter, BellSouth argued that the “Directors have decided that it is time to set a schedule for this case.”⁹ In addition, BellSouth suggested that CompSouth had “at every turn, sought to delay the establishment of a schedule for proceeding.”¹⁰ Finally, BellSouth argued that there was “nothing to suggest that BellSouth’s Motion is somehow too complex to be handled using a discovery and hearing schedule.”¹¹

⁴ On November 5, 2004, the Hearing Officer issued a Notice of Filing, directing any persons or entities that intended to participate in discovery to file a petition for intervention no later than November 12, 2004. On November 5, 2004, CompSouth filed its *Petition to Intervene*, which was granted on November 17, 2004.

⁵ *Letter from Henry Walker to Jean Stone, Hearing Officer*, p. 1 (November 5, 2004).

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Letter from Guy M. Hicks to Jean Stone, Hearing Officer*, p. 1 (November 12, 2004).

¹⁰ *Id.* at 2.

¹¹ *Id.*

FINDINGS AND CONCLUSIONS

After careful consideration of the comments of the parties, the Hearing Officer finds that a procedural schedule should be set in this docket without further delay. The panel voted unanimously to move forward to a hearing in this docket,¹² although the directors did not specify the manner in which to accomplish preparation of this docket for that hearing. This docket previously had been held in abeyance pending a workshop in TRA Docket No. 97-00309. Therefore, the Hearing Officer concludes that, because the panel similarly could have directed that a workshop be held in this docket and chose not to do so, it was not the intent of the panel to proceed in that manner. Further, even if the Hearing Officer has discretion to set a series of workshops as proposed by CompSouth to prepare this matter for a hearing, the Hearing Officer finds that this docket can be adequately handled by the Authority through a procedure with discovery and a hearing such as the one proposed by BellSouth. The Hearing Officer further finds that an issues list or matrix setting forth the respective positions of BellSouth and CompSouth would be of assistance to the panel. Therefore, the parties are directed to file an issues list no later than the date indicated below. The following procedural schedule is established in this docket:

December 15, 2004

First Round Discovery Requests Served (one copy filed with the Authority)

December 15, 2004

Proposed Protective Order filed

January 7, 2005

Responses or Objections to First Round of Discovery Due (one copy of responses filed with the Authority)

January 14, 2005

Motions to Compel Due (if any)


¹² See *Order Reactivating Docket, Denying Motion to Close Docket and Appointing a Hearing Officer* (November 24, 2004)

January 19, 2005	Status Conference on Discovery (if needed)
January 26, 2005	Supplemental Discovery Responses (one copy filed with the Authority) (if needed)
February 2, 2005	Second Round Discovery Requests Served (one copy filed with the Authority)
February 17, 2005	Responses or Objections to Second Round of Discovery Due (one copy filed with the Authority)
February 22, 2005	Motions to Compel Due (if any)
February 25, 2005	Status Conference on Discovery (if needed)
March 4, 2005	Supplemental Discovery Responses (one copy filed with the Authority) (if needed)
March 11, 2005	Issues List Due
March 21, 2005	Direct Testimony Due (all parties)
April 4, 2005	Rebuttal Testimony Due (all parties)
April 11, 2005	Pre-Hearing Conference

The dates for a Hearing before the Panel will be determined at a later date and an Addendum to this Procedural Schedule will be issued. All filings are due no later than 2:00 p.m. (central) on the dates indicated.

IT IS THEREFORE ORDERED THAT:

1. BellSouth's *Motion to Establish Procedural Schedule* is granted; and
2. A Procedural Schedule is established as set forth herein.


 Jean A. Stone, Hearing Officer